# FISCAL NOTE

# HB 555 - SB 671

April 2, 2009

**SUMMARY OF BILL:**    Increases the penalty for specified crimes of violence committed by persons acting in concert with two or more others one classification higher than if the defendant had acted alone. Existing Class A felonies committed by persons acting in concert with two or more persons will be sentenced at the maximum range.

## ESTIMATED FISCAL IMPACT:

**Increase State Expenditures - $17,141,100/Incarceration\***

Assumptions:

- According to the Department of Correction (DOC), there has been an average of 136 admissions for the Class A felony offense of second degree murder in each of the past 10 years. Assume 12 percent of those (16) would have been acting in concert with two or more persons and would be sentenced one classification higher.
- According to DOC, the average post-conviction time served for a Class C is 3.59 years, 6.17 years for a Class B, and 14.86 years for a Class A.
- The cost per offender at 3.59 years is $78,426.50 ($59.80 x 1,311.48 days). The cost per offender at 6.17 years is $134,727.00 ($59.80 x 2,252.96 days). The cost per offender at 14.86 years is $324,636.26 ($59.80 x 5,428.70 days).
- Sixteen persons will be convicted of the Class A felony offense of second degree murder while acting in concert with two or more persons in the first year and will serve additional time on their sentences. According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will result in two additional persons in the tenth year as a result of this bill.
- According to DOC, 42 percent of offenders will re-offend within three years of their release. A recidivism discount of 42 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by

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this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (18 offenders x 42% recidivism discount = 8 offenders). The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 10 (18 - 8 offenders) serving an additional time on their sentences. The average post-conviction time served for second degree murder is 14.44 years. The cost per offender at 14.44 years is $315,397.76 ($59.80 x 5,274.21 days). The cost per offender in the tenth year is $533,817.26 ($59.80 x 8,926.71 days). The cost of increasing the average sentence an additional 10.56 years (an increase from 14.44 years to 25.0 years) is $218,419.50 ($533,817.26 - $315,397.76). The total additional operating cost for 10 offenders is $2,184,195 ($218,419.50 x 10).

- According to DOC, there has been an average of 38 admissions for the Class A offense of attempted first degree murder in each of the past 10 years. Assume 12 percent (5) would have been acting in concert with two or more persons and would be sentenced one classification higher. Five persons will be convicted of the Class A felony offense of attempted first degree murder in the first year. Population growth will result in one additional offender. A recidivism discount of 42 percent has been applied to this estimate (6 offenders x 42% recidivism discount = 3 offenders). The average post-conviction time served for criminal attempt to commit first degree murder is 11.77 years. The maximum cost is based on three offenders (6 – 3) offenders serving an additional 13.23 years (an increase from 11.77 years to 25.0 years). The cost per conviction at 11.77 years is $257,079.60 ($59.80 x 4,298.99 days).The cost per conviction in the tenth year (21.77) is $475,499.10 ($59.80 x 7,951.49 days). The cost of increasing the average sentence an additional 13.23 years is $218,419.50 ($475,499.10 - $257,079.60). The total additional operating cost for 3 offenders is $655,258.50 ($218,419.50 x 3).

- According to DOC, there has been an average of 74 admissions for the Class B felony of attempted second degree murder. Assume 12 percent (9) of those were committed in concert with two or more persons and will be convicted of the Class A felony offense of attempted second degree murder in the first year as a result of this bill. Population growth will result in one additional offender in the tenth year. A recidivism discount of 42 percent has been applied to this estimate (10 offenders x 42% recidivism discount = 4 offenders). The maximum cost in the tenth year is based on six (10 – 4) offenders. Six persons will serve an additional 8.69 years (an increase from 6.17 years to 14.86 years). The cost of increasing the average sentence length is $189,909.26 ($324,636.26 - $134,727.00). The total additional operating cost for six offenders is $1,139,455.56 ($189,909.26 x 6).

- According to DOC, there has been an average of 25 admissions for the Class B felony offense of carjacking. Assume 12 percent (3) of those

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were committed in concert with two or more persons and will be convicted of the Class A felony offense of carjacking. No significant incarceration cost increase will occur due to population growth in this period. A recidivism discount of 42 percent has been applied to this estimate (3 offenders x 42% recidivism discount = 1 offenders). The maximum cost in the tenth year is based on two (3 – 1) offenders serving an additional 8.69 years (an increase from 6.17 years to 14.86 years). The cost of increasing the average sentence length is $189,909.26 ($324,636.26 - $134,727.00). The total additional operating cost for two offenders is $379,818.52 ($189,909.26 x 2).
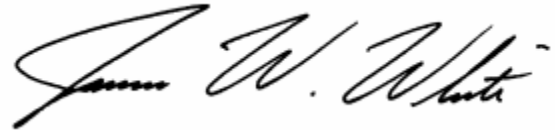
- According to DOC, there has been an average of 39 admissions for the Class A offense of especially aggravated robbery. Assume 12 percent (5) of those crimes were committed in concert with two or more persons and will be sentenced one classification higher. Population growth will result in one additional offender in the tenth year. A recidivism discount of 42 percent has been applied to this estimate (6 offenders x 42% recidivism discount = 3 offenders). The maximum cost in the tenth year is based on three (6 - 3) offenders serving an additional 10.14 years (an increase from 14.86 years to 25.0 years). The cost of increasing the average sentence an additional 10.14 years is $218,354.86 ($542,991.12 - $324,636.26). The total additional operating cost for three offenders is $655,064.58 ($218,354.86 x 3).

- According to DOC, there has been an average of 671 admissions for the Class B felony offense of aggravated robbery. Assume 12 percent (81) of those crimes were committed in concert with two or more persons and will be convicted of the Class A felony offense of aggravated robbery. Population growth will result in nine additional offenders in the tenth year. A recidivism discount of 42 percent has been applied to this estimate (90 offenders x 42% recidivism discount = 38 offenders). The maximum cost in the tenth year is based on 52 (90 - 38) offenders serving an additional 8.69 years (an increase from 6.17 years to 14.86 years). The cost of increasing the average sentence length is $189,909.26 ($324,636.26 - $134,727.00). The total additional operating cost for 51 offenders is $9,875,281.52 ($189,909.26 x 52).

- According to DOC, there has been an average of 457 admissions for the Class C felony offense of robbery. Assume 12 percent (55) of those crimes were committed in concert with two or more persons and will be convicted of the Class B felony offense of robbery. Population growth will result in six additional offenders in the tenth year. A recidivism discount of 35 percent has been applied to this estimate (61 offenders x 35% recidivism discount = 21 offenders). The maximum cost in the tenth year is based on 40 (61 – 21) offenders serving an additional 2.58 years (an increase from 3.59 years to 6.17 years). The cost of increasing the average sentence length is $56,300.50 ($134,727.00 - $78,426.50).

The total additional operating cost for 40 offenders is $2,252,020 ($56,300.50 x 40).

*Tennessee Code Annotated, Section 9-4-210, requires that: *For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

## CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.

James W. White, Executive Director

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